

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5276

IN THE MATTER OF:

Served February 17, 1998

Application to Transfer)	Case No. AP-97-47
Certificate No. 309 from BACH)	
VU, Trading as AFFORDABLE)	
AIRPORT CHARTER, to AFFORDABLE)	
AIRPORT CHARTER, INC.)	

Investigation of Unauthorized)	Case No. MP-97-76
Operations of AFFORDABLE AIRPORT)	
CHARTER, INC., and Affiliation)	
with BACH VU, Trading as)	
AFFORDABLE AIRPORT CHARTER,)	
WMATC No. 309)	

By application accepted for filing September 8, 1997, Bach Vu, trading as Affordable Airport Charter, (Vu), WMATC Carrier No. 309, and Affordable Airport Charter, Inc., (AACI), a Maryland corporation, (collectively applicants), seek Commission approval to transfer Certificate of Authority No. 309 from Vu to AACI. The application describes Vu as an officer and fifty-percent shareholder of AACI.

The application appears to have been filed in response to the Commission's investigation of applicants' operations from January 1, 1996, through August 5, 1997. The two proceedings are being consolidated because the question of whether AACI violated the Compact during the period under investigation is relevant to a determination of whether AACI is fit to serve as a WMATC carrier.

The investigation was initiated on August 5, 1997, in Order No. 5178, on the basis of several filings made by respondents in early 1997 indicating that AACI began transporting passengers for hire in the Metropolitan District in 1996 without a certificate of authority. Respondents were directed to produce all records in their possession, custody or control relating to transportation of passengers for hire in the Metropolitan District during the period in question.

Respondents produced a number of documents in response, including AACI's vehicle titles, bank and insurance records, customer invoices, driver manifests and tax returns. As supplemented by respondents' reply to staff's follow-up questions, these documents support a finding that AACI transported passengers for hire in the Metropolitan District continuously from January 3, 1997, through August 5, 1997, and beyond.

The Compact provides that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.¹ AACI has never held a certificate of authority. Consequently, we find that AACI's operations violated the Compact.

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.² "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.³

As a WMATC carrier, Bach Vu is charged with the knowledge that AACI may not transport passengers for hire in the Metropolitan District without a certificate of authority issued in its name.⁴ As an officer and controlling shareholder, Mr. Vu's knowledge is imputed to AACI.⁵

The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁶ Accordingly, one of the factors we take into consideration when determining the appropriate size of a forfeiture is whether the carrier profited from its misdeeds.⁷ According to AACI's

¹ Compact, tit. II, art. XI, § 6.

² DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 at 1-2 (Dec. 20, 1993).

³ Id. at 2.

⁴ Cf., In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5065 (Apr. 24, 1997) (carrier charged with knowledge of Compact's common control rules).

⁵ See id. (knowledge of officer/shareholder attributed to carrier).

⁶ Order No. 4226 at 3.

⁷ See In re Bill Appell, t/a Personal Pace Tours/Tech Tours Wash., No. MP-95-18, Order No. 4762 (Feb. 8, 1996) (forfeiture reduced in light of negligible profit); In re Regency Limo. Serv., Inc., No. MP-94-01, Order No. 4323 (June 21, 1994) (forfeiture waived for insolvency); In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993) (forfeiture reduced in light of negligible profit); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24,

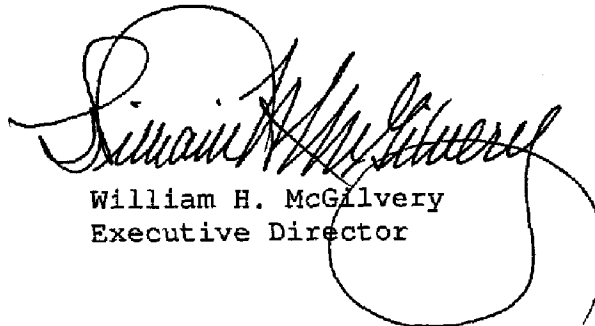
tax returns and operating statement for 1996, AACI did not realize any profit from its operations in 1996, but no data has been provided for 1997. Moreover, there is no indication in the record when AACI ceased operations. We will direct AACI to file a statement under oath indicating the date it ceased transporting passengers for hire in the Metropolitan District and a supplemental income statement covering, at a minimum, the period beginning January 1, 1997, and ending on the date operations ceased.

In addition, we will direct AACI to file an amended balance sheet and an amended projected operating statement, Exhibits E and G to the application, which take into account the results of operations reported in the supplemental income statement.

THEREFORE, IT IS ORDERED, that AACI shall file the following documents within 30 days from the date of this order:

1. a statement under oath indicating the date AACI ceased transporting passengers for hire in the Metropolitan District;
2. a supplemental income statement covering, at a minimum, the period beginning January 1, 1997, and ending on the date AACI ceased transporting passengers for hire in the Metropolitan District;
3. an amended balance sheet which takes into account the results of operations reported in AACI's supplemental income statement; and
4. an amended projected operating statement for the first twelve months of WMATC operations which takes into account the results of operations reported in AACI's supplemental income statement.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director

